ESTTA Tracking number: **ESTTA661620**

Filing date: **03/17/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	79139822
Applicant	K.A. Schmersal Holding GmbH & Co. KG
Applied for Mark	S SCHMERSAL SAFE SOLUTIONS FOR YOUR INDUSTRY
Correspondence Address	IAN L SAFFER KILPATRICK TOWNSEND & STOCKTON LLP 1400 WEWATTA STREET, SUITE 600 DENVER, CO 80202 UNITED STATES denverteas@kilpatricktownsend.com
Submission	Appeal Brief
Attachments	89442-904150_ApplicantBrief.pdf(166235 bytes) 89442-904150_Exhibit_A.pdf(331366 bytes)
Filer's Name	David E. Sipiora
Filer's e-mail	denverteas@kilpatricktownsend.com
Signature	/David E. Sipiora/
Date	03/17/2015

Attorney Docket No.: 89442-904150

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application No. 79139822
Filed: February 15, 2013
For: S SCHMERSAL SAFE SOLUTIONS FOR YOUR INDUSTRY (Stylized)

United States Patent And Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

BRIEF FOR APPELLANT

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I. INTRODUCTION

Applicant and Appellant K.A. Schmersal Holding GmbH & Co. KG ("Applicant") appeals from the Examining Attorney's April 22, 2014 final refusal on the grounds that the recitation of goods in the application for the Applicant's mark S SCHMERSAL SAFE SOLUTIONS FOR YOUR INDUSTRY (Stylized) is indefinite.

II. STATEMENT OF THE ISSUE

Whether the Examining Attorney erred in refusing Applicant's application to register the trademark S SCHMERSAL SAFE SOLUTIONS FOR YOUR INDUSTRY (Stylized) on the grounds that the recitation of goods in Class 9 is indefinite.

III. PROSECUTION HISTORY

On December 12, 2013, Applicant filed an Application to register the mark S SCHMERSAL SAFE SOLUTIONS FOR YOUR INDUSTRY (Stylized) under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141 f(a), based on International Registration No. 1185105, registered on August 6, 2013, in Classes 9 and 42.

Applicant's original recitation of goods in Class 9 was as follows:

> Surveying, measuring, signaling and checking (supervision) apparatus and instruments; electronic and electromechanical monitoring apparatus; optoelectronic apparatus; laser scanners; light barriers; light grid sensors; tactile safety monitoring devices in the form of safety mats; monitoring sensors; electrical or electronic switchgear monitoring devices; lift monitoring and switching apparatus; lift door controls; evaluating apparatus for identifying signals provided by electrical or electronic components; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; momentum transmitters; switches, in particular safety switches, limit switches, position switches, cable pull switches, emergency switches, two-hand switches, micro switches, foot switches and proximity switches; non-contact, electric, magnetic and electromechanical locks; switching equipment; remotely controlled safety circuit, area and surface protection components, as entry, danger point or danger zone guards; standstill monitors;

evaluation device for identifying an electrical or electronic component or its status; controls, in particular electronic, memory-programmable or permanent-programmable controls; data buses and components therefor; data bus controls; signal lamps; control panels; electrical or electronic control switches; bumpers for electrical signal generation.

Applicant's original recitation of services in Class 42 was as follows:

> Engineering services; design and development of safety concepts for machines and mechanical installations, and for chemical engineering and process technology apparatus and installations, design and development of surveying, measuring, signaling and checking (supervision) apparatus and instruments; design and development of electronic and electromechanical monitoring apparatus; design and development of optoelectronic apparatus, and design and development of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity.

On December 21, 2013, the Examining Attorney issued an initial Office Action refusing registration on the grounds of indefinite description of goods in Class 9 and services in Class 42, as well as requiring the Applicant to submit a claim of ownership of prior registrations and to describe the applied-for mark in more accurate and concise manner.

In its March 28, 2014 Office Action response, Applicant complied with each issue raised by the Examiner, amending the description of goods and services as follows:

> **Class 9:** Surveying, measuring, signaling, and checking, apparatus and instruments, namely, power continuity test apparatus for use with electrical circuits, safety light curtains, and tactile safety monitoring devices in the form of safety edges and safety mats; electronic and electromechanical monitoring apparatus, namely, guard door monitoring and safety-monitoring modules; optoelectronic apparatus, namely, safety monitoring modules for machine guarding; laser scanners; safety light barriers; light grid sensors for machine safety guarding; tactile safety monitoring devices, namely, alarm that utilizes pressure sensitive pads to monitor movement of persons; monitoring sensors for position and speed of machinery; electrical or electronic switchgear monitoring devices for machine safety guarding; lift monitoring and switching apparatus, namely, lift ultrasonic position system, lift magnetic reed switches, lift position switches, lift floor switches, lift fine adjustment switches; lift door controls,

namely, electric and electromagnetic lift door contacts and lift door locks; evaluating apparatus for identifying signals provided by electrical or electronic components, namely, safety relay modules, safety monitoring modules and fail safe delay timer for use in the field of machine safety guarding; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, adapters, electricity conduits, input expanders and output expanders; momentum transmitters, namely, cable pull switches, rotating spindle limit switches, slack-wire switches and belt alignment limit switches; electric and electromagnetic switches, namely, electric and electromagnetic safety switches, electric and electromagnetic limit switches, electric and electromagnetic position switches, electric and electromagnetic cable pull switches, electric and electromagnetic emergency switches, electric and electromagnetic two-hand switches, electric and electromagnetic micro switches, gear switches, rotating spindle limit switches, slack-wire switches, belt alignment switches, magnetic reed switches, door handle switches, electric and electromagnetic foot switches and proximity switches, all for machine safety guarding; non-contact electric locks; electric, magnetic, electromagnetic and electromechanical locks; switching equipment and housing therefor, namely, electric and electromagnetic switches; remotely controlled safety circuit breakers, area and surface protection components for use as entry, danger point or danger zone guards, namely, components for tactile safety devices in the form of alarms that utilize pressure sensitive pads and mats to monitor movement of persons; standstill monitors for monitoring machinery evaluation device for identifying an electrical or electronic component or its status, namely, switches and sensors in emergency-stop and guard door monitoring devices; electronic controllers, namely, electronic, memory-programmable or permanent-programmable controllers for use in the microprocessor-controlled safety technology industry; data buses and components therefor; data bus controls; signal lamps, namely, signal lamps in the nature of lights used to indicate equipment status lighting control panels; electric and electronic control panels electrical or electronic control switches; bumpers for electrical signal generation, namely, safety edges which generate electric signals for use in machine safety guarding; and delay timers.

Class 42: Engineering services; design and development of safety features for machines and mechanical installations, and for chemical engineering and process technology apparatus and installations; design and development of surveying, measuring, signaling and checking, supervision apparatus and instruments for use in the field of safety guarding; design and development of electronic and electromechanical monitoring apparatus for use in the field of safety guarding; design and development of optoelectronic apparatus, and design and development of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity.

On April 22, 2014, the Examining Attorney issued a final Office Action withdrawing the requirements for a claim of prior registrations and an acceptable description of the mark since

those requirements had been met by the Applicant in its response to the initial Office Action. The Examiner maintained her position with regard to the identification of goods in Class 9 and services in Class 42 requiring the Applicant to further amend the allegedly indefinite wording and specify the common commercial names of the major components of the Applicant's "lift ultrasonic position system."

Applicant filed the present Appeal and a Request for Reconsideration on October 17, 2014. Applicant also complied with Examiner's requirements accepting Examiner's proposed amendment to the recitation of goods and services in Classes 9 and 42 and specifying the components of Applicant's system. Applicant's further amended goods and services description was as follows:

> **Class 9**: Surveying, measuring, signaling, and checking, supervision apparatus and instruments, namely, power continuity test apparatus for use with electrical circuits, safety light curtains, and tactile safety monitoring devices in the form of safety edges and safety mats; electronic and electromechanical monitoring apparatus, namely, guard door monitoring and safety-monitoring modules; optoelectronic apparatus, namely, safety monitoring modules for machine guarding; laser scanners; safety light barriers; light grid sensors for machine safety guarding; tactile safety monitoring devices, namely, alarms that utilizes pressure sensitive pads to monitor movement of persons; monitoring sensors for position and speed of machinery; electrical or electronic switchgear monitoring devices for machine safety guarding; electric and electronic controllers for lifts, namely, lift monitoring apparatus comprised of sockets connecting outputs of the evaluation units, microprocessors monitoring speed and acceleration, amplifier actuating a safety relay stage acting on the lift control system, and the safety circuit for switching off the lift drive; and electric and electronic controllers for lift switching apparatus, namely, lift ultrasonic position system comprised of receiver, transmitter, swing protection, dampers, correction sensor, actuating magnets, and signal wire, lift magnetic reed switches, lift position switches, lift floor switches, lift fine adjustment switches; lift door controls, namely, electric and electromagnetic lift door contacts and lift door locks; evaluating apparatus for identifying signals provided by electrical or electronic components, namely, safety relay modules, safety monitoring modules and fail safe delay timer for use in the field of machine safety guarding; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, adapters, electricity conduits, input expanders and output expanders; momentum transmitters, namely, cable pull switches, rotating spindle limit

switches, slack-wire switches and belt alignment limit switches; electric and electromagnetic switches, namely, electric and electromagnetic safety switches, electric and electromagnetic limit switches, electric and electromagnetic position switches, electric and electromagnetic cable pull switches, electric and electromagnetic emergency switches, electric and electromagnetic two-hand switches, electric and electromagnetic micro switches, gear switches, rotating spindle limit switches, slack-wire switches, belt alignment switches, magnetic reed switches and door handle switches, electric and electromagnetic foot switches and proximity switches, all for machine safety guarding; non-contact electric locks; electric, magnetic, electromagnetic and electromechanical locks; switching equipment and housing therefor, namely, electric and electromagnetic switches; remotely controlled safety circuit breakers, area and surface protection components for use as entry, danger point or danger zone guards, namely, components for tactile safety devices in the form of alarms that utilize pressure sensitive pads and mats to monitor movement of persons; standstill monitors for monitoring machinery evaluation device for identifying an electrical or electronic component or its status, namely, electric switches and sensors in emergency-stop and guard door monitoring devices; electronic controllers, namely, electronic, memory-programmable or permanent-programmable controllers for use in the microprocessor-controlled safety technology industry; data buses and components therefor being computer hardware; data bus controls being computer hardware; signal lamps, namely, signal lamps in the nature of lights used to indicate equipment status lighting control panels; electric and electronic control panels; electrical or electronic control switches; bumpers for electrical signal generation, namely, electric safety edges which generate electric signals for use in machine safety guarding; and delay timers.

Class 42: Engineering services; design and development of safety features for machines and mechanical installations, including, design and development of lift electronic safety systems, and for chemical engineering and process technology apparatus and installations; design and development of surveying, measuring, signaling and checking, supervision apparatus and instruments for use in the field of industrial safety for people and machines; design and development of electronic and electromechanical monitoring apparatus for use in the field of industrial safety for people and machines; design and development of optoelectronic apparatus, and design and development of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity.

On January 5, 2015 the Examining Attorney issued further final Office Action superseding the final Office Action of April 22, 2014. In that Action, Examiner required Applicant to revise, again, certain wording in the identification of Class 9. The amendment to

the recitation of services in Class 42 was accepted by the Examiner. The second final Office Action contained a statutory 6-month requirement for filing a response; the Board found the 6-month time for filing incorrect, stating that, "…the Trademark Attorney inadvertently indicated that "A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT." This clause is not applicable under the circumstances of this case."

IV. ARGUMENT

In light of the second final Office Action issued by the Examining Attorney on January 5, 2015, requiring the Applicant to further amend the description of goods in Class 9, Applicant hereby complies with Examiner's further proposed amendments, including deletion of certain terms that, according to the Examiner, appear too broad for the Examiner to suggest acceptable wording. Applicant, through this Appeal Brief, respectfully requests an amendment to the recitation of goods in Class 9 as follows:

> **Class 9**: Surveying, measuring, signaling, and checking, supervision apparatus and instruments, namely, power continuity test apparatus for use with electrical circuits, safety light curtains, and tactile safety monitoring devices in the form of safety edges and safety mats; electronic and electromechanical monitoring apparatus, namely, guard door monitoring and safety-monitoring modules; optoelectronic apparatus, namely, safety monitoring modules for machine guarding; laser scanners; safety light barriers **for machine safety guarding**; light grid sensors for machine safety guarding; tactile safety monitoring devices, namely, alarms that utilizes pressure sensitive pads to monitor movement of persons; monitoring sensors for **determining the** position and speed of machinery; electrical or electronic switchgear monitoring devices for machine safety guarding; ~~electric and electronic controllers for lifts, namely, lift monitoring apparatus comprised of sockets connecting outputs of the evaluation units, microprocessors monitoring speed and acceleration, amplifier actuating a safety relay stage acting on the lift control system, and the safety circuit for switching off the lift drive; and~~ electric and **electromechanical** ~~electronic controllers for lift~~ switching apparatus, namely, lift ultrasonic position system, ~~comprised of receiver, transmitter, swing protection, dampers, correction sensor, actuating magnets, and signal wire,~~ lift magnetic reed switches, lift position

switches, lift floor switches, lift fine adjustment switches **and controllers therefor**; lift door controls, namely, electric and electromagnetic lift door contacts and lift door locks; evaluating apparatus for identifying signals provided by electrical or electronic components, namely, safety relay modules, safety monitoring modules and fail safe delay timer for use in the field of machine safety guarding; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, adapters, electricity conduits, input expanders and output expanders; **electric conveyor belt** momentum transmitters, namely, cable pull switches, rotating spindle limit switches, slack-wire switches and belt alignment limit switches; electric and electromagnetic switches, namely, electric and electromagnetic safety switches, electric and electromagnetic limit switches, electric and electromagnetic position switches, electric and electromagnetic cable pull switches, electric and electromagnetic emergency switches, electric and electromagnetic two-hand switches, electric and electromagnetic micro switches, gear switches, rotating spindle limit switches, slack-wire switches, belt alignment switches, magnetic reed switches and door handle switches, electric and electromagnetic foot switches and proximity switches, all for machine safety guarding; non-contact electric locks; electric, magnetic, electromagnetic and electromechanical locks; switching equipment and housing therefor, namely, electric and electromagnetic switches; remotely controlled safety circuit breakers, area and surface protection components for use as entry, danger point or danger zone guards, namely, components for tactile safety devices in the form of alarms that utilize pressure sensitive pads and mats to monitor movement of persons; standstill monitors for monitoring machinery evaluation device for identifying an electrical or electronic component or its status, namely, electric switches and sensors in emergency-stop and guard door monitoring devices; electronic controllers, namely, electronic, memory-programmable or permanent-programmable controllers **for controlling machinery** for use in the microprocessor-controlled safety technology industry; data buses and components therefor being computer hardware; data bus controls being computer hardware; signal lamps, namely, signal lamps in the nature of lights used to indicate equipment status lighting control panels; electric and electronic control panels; electrical or electronic control switches; bumpers for electrical signal generation, namely, electric safety edges which generate electric signals for use in machine safety guarding; ~~and delay timers~~.

As stated above, the following two terms were identified by the Examining Attorney as "too broad to suggest acceptable wording":

"electric and electronic controllers for lifts, namely, lift monitoring apparatus comprised of sockets connecting outputs of the evaluation units, microprocessors monitoring speed and acceleration, amplifier actuating a safety relay stage acting on the lift control system, and the safety circuit for switching off the lift drive*;"* ***[the first term]***

> "electric and electronic controllers for lift switching apparatus, namely, lift ultrasonic position system comprised of receiver, transmitter, swing protection, dampers, correction sensor, actuating magnets, and signal wire, lift magnetic reed switches, lift position switches, lift floor switches, lift fine adjustment switches;" ***[the second term].***

Applicant, through this Appeal Brief, has deleted the "first term" in its entirety and amends the "second term" consistent with Applicant's prior registration for the mark **SCHMERSAL**, Registration No. 3848394 (attached hereto as Exhibit A), claimed in this application as requested by the Examiner in the initial Office Action of December 21, 2013. Specifically, Registration No. 3848394 contains the following term in Class 9:

> "…lift monitoring and switching apparatus, namely, lift ultrasonic position system, lift magnetic reed switches, lift position switches, lift floor switches, lift fine adjustment switches;…"

Therefore, Applicant respectfully submits that the "second term" objected to by the Examiner be amended as follow and as indicated above:

> "electric and ~~electronic~~ **electromechanical** ~~controllers for lift~~ switching apparatus, namely, lift ultrasonic position system ~~comprised of receiver, transmitter, swing protection, dampers, correction sensor, actuating magnets, and signal wire~~, lift magnetic reed switches, lift position switches, lift floor switches, lift fine adjustment switches, **and controllers therefor;"**

V. CONCLUSION

Applicant respectfully requests that the Board reverse the Examining Attorney's refusal to register the mark S SCHMERSAL SAFE SOLUTIONS FOR YOUR INDUSTRY (Stylized), by accepting Applicant's proposed amendment herein and/or allowing Applicant to submit these amendments through the U.S. PTO TEAS channels.

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LP

Dated: March 17, 2015

By: /David E. Sipiora/
David E. Sipiora

Kilpatrick Townsend & Stockton LP
1400 Wewatta Street, Suite 600
Denver, CO 80202
Telephone: (303) 571-4000
Facsimile: (303) 571-4321

Attorneys for Appellant

United States of America

United States Patent and Trademark Office

SCHMERSAL

Reg. No. 3,848,394

Registered Sep. 14, 2010

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

K.A. SCHMERSAL HOLDING KG (FED REP GERMANY KOMMANDITGESELLSCHAFT (KG))
MODDINGHOFE 30
WUPPERTAL, FED REP GERMANY 42279

FOR: SURVEYING, MEASURING SIGNALING, CHECKING AND SUPERVISION APPARATUS AND INSTRUMENTS, NAMELY, POWER CONTINUITY TEST APPARATUS FOR USE WITH ELECTRICAL CIRCUITS, SAFETY LIGHT CURTAINS, AND TACTILE SAFETY MONITORING DEVICES IN THE FORM OF SAFETY EDGES AND SAFETY MATS; ELECTRONIC AND ELECTROMECHANICAL MONITORING SENSORS FOR GUARD DOOR MONITORING AND SAFETY-MONITORING MODULES; OPTOELECTRONIC APPARATUS, NAMELY, SAFETY MONITORING MODULES FOR MACHINE GUARDING; SAFETY LASER SCANNERS, SAFETY LIGHT BARRIERS, AND SAFETY LIGHT GRID SENSORS FOR MACHINE SAFETY GUARDING; TACTILE SAFETY MONITORING DEVICES, NAMELY, ALARM THAT UTILIZES PRESSURE SENSITIVE PADS TO MONITOR MOVEMENT OF PERSONS; MONITORING SENSORS FOR POSITION AND SPEED OF MACHINERY; ELECTRICAL AND ELECTRONIC GEAR SWITCH MONITORING DEVICES FOR MACHINE SAFETY GUARDING; LIFT MONITORING AND SWITCHING APPARATUS, NAMELY, LIFT ULTRASONIC POSITION SYSTEM, LIFT MAGNETIC REED SWITCHES, LIFT POSITION SWITCHES, LIFT FLOOR SWITCHES, LIFT FINE ADJUSTMENT SWITCHES; ELECTRONIC LIFT DOOR CONTROLS, NAMELY, LIFT DOOR CONTACTS AND LIFT DOOR LOCKS; EVALUATING APPARATUS FOR IDENTIFYING SIGNALS PROVIDED BY ELECTRICAL OR ELECTRONIC COMPONENTS, NAMELY, SAFETY RELAY MODULES, SAFETY MONITORING MODULES AND FAIL SAFE DELAY TIMER FOR USE IN THE FIELD OF MACHINE SAFETY GUARDING; APPARATUS AND INSTRUMENTS FOR CONDUCTING, SWITCHING, TRANSFORMING, ACCUMULATING, REGULATING OR CONTROLLING ELECTRICITY, NAMELY, ADAPTERS, ELECTRICITY CONDUITS, INPUT EXPANDERS AND OUTPUT EXPANDERS; CONVEYER BELT MOMENTUM TRANSMITTERS, NAMELY, CABLE PULL SWITCHES, ROTATING SPINDLE LIMIT SWITCHES, SLACK-WIRE SWITCHES AND BELT ALIGNMENT LIMIT SWITCHES; ELECTRIC SWITCHES, NAMELY, SAFETY SWITCHES, LIMIT SWITCHES, POSITION SWITCHES, CABLE PULL SWITCHES, EMERGENCY SWITCHES, TWO-HAND SWITCHES, MICRO SWITCHES, FOOT SWITCHES, GEAR SWITCHES, ROTATING SPINDLE LIMIT SWITCHES, SLACK-WIRE SWITCHES, BELT ALIGNMENT SWITCHES, MAGNETIC REED SWITCHES, DOOR HANDLE SWITCHES AND PROXIMITY SWITCHES ALL FOR MACHINE SAFETY GUARDING; NON-CONTACT ELECTRIC, ELECTRIC, ELECTRIC MAGNETIC AND ELECTROMECHANICAL LOCKS; AUTOMATIC SWITCHING APPARATUS AND HOUSING THEREFOR; ELECTRONIC SAFETY APPARATUS FOR THE REMOTE CONTROL OF INDUSTRIAL OPERATIONS; AREA AND SURFACE PROTECTION COMPONENTS, FOR ENTRY, DANGER POINT OR DANGER ZONE GUARDS, NAMELY, COMPONENTS FOR TACTILE SAFETY DEVICES IN THE FORM OF ALARMS THAT UTILIZE PRESSURE SENSITIVE PADS AND MATS TO MONITOR MOVEMENT OF PERSONS; STANDSTILL MONITORING DEVICES WHICH DETECT AND MONITOR A STANDSTILL OF MA-

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

David J. Kappos

Director of the United States Patent and Trademark Office

Reg. No. 3,848,394 CHINERY; EVALUATION APPARATUS FOR IDENTIFYING AN ELECTRICAL OR ELECTRONIC COMPONENT OR ITS STATUS, NAMELY, EMERGENCY-STOP AND GUARD DOOR MONITORING DEVICE; CONTROLS, NAMELY, ELECTRONIC MEMORY-PROGRAMMABLE AND PERMANENT-PROGRAMMABLE CONTROLS FOR USE IN THE MICROPROCESSOR-CONTROLLED SAFETY TECHNOLOGY INDUSTRY; DATA BUSES AND COMPONENTS THEREFOR, NAMELY, USB (UNIVERSAL SERIAL BUS) HARDWARE AND SAFETY FIELDS BUS SYSTEMS HARDWARE; SIGNAL LAMPS, NAMELY, STACK LIGHTS FOR INDICATING A MACHINE OR DEVICE STATUS OR ALARM; ELECTRIC CONTROL PANELS; ELECTRICAL OR ELECTRONIC CONTROL SWITCHES FOR THE INPUT OF OPERATION MODE FOR USE IN INDUSTRIAL APPLICATIONS; AND BUMPERS FOR ELECTRICAL SIGNAL GENERATION, NAMELY, A FAIL-SAFE DELAY TIMER, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1983; IN COMMERCE 0-0-1983.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F).

OWNER OF U.S. REG. NOS. 2,547,007, 3,608,954, AND 3,612,563.

SN 77-613,221, FILED 11-12-2008.

TINA L. SNAPP, EXAMINING ATTORNEY